

Agenda Item: 11-3

Meeting Dates: August 11 and 12, 2004

California Bay-Delta Authority Meeting

June 9 and 10, 2004

650 Capitol Mall, Fifth Floor

Sacramento, California

SUMMARY OF MEETING ACTION ITEMS

Program Plans. The Authority deferred approval of Resolution 04-06-01 approving Criteria for Approval of Program Plans. The Program Plan Criteria will be revised based on the members' comments and suggestions and reconsidered at the next Authority meeting in August.

Science Program. At the request of Chairman Hunt, Dr. Johnnie Moore, Lead Scientist, will ask experts in the field of climate change to speak on the potential impacts to the California snowpack and the potential impacts to storage at a future Authority meeting.

Ecosystem Restoration Program.

- The Authority approved implementation of the Mercury Strategy for the Bay-Delta Ecosystem.
- The Authority approved three Ecosystem Restoration Program (ERP) grants and authorized the Director or designee to process the grants.

Delta Improvements Package. The Authority adopted the amended resolution supporting development of a draft Memorandum of Understanding, or draft Action Plan, for CALFED Program activities in the Delta and directing staff to work with the implementing agencies to bring a final Action Plan to the August Authority meeting for consideration.

Water Supply Program. The Authority recommended to the Department of Water Resources (DWR) that it proceed with the award of identified local groundwater assistance program grants for FY 2003-04.

Note: Copies of the packet materials mentioned in this summary can be found on the California Bay-Delta Authority website at: <http://calwater.ca.gov> If you have any questions, please contact Heidi Rooks at (916) 445-0533.

California Bay-Delta Authority Meeting
June 9 and 10, 2004

MEETING SUMMARY

9-1. CALL TO ORDER AND INTRODUCTORY REMARKS

The meeting was called to order at 1:10 p.m., June 9, 2004, by Gary Hunt, Chair of the Bay-Delta Authority (Authority) and Representative Member of the Bay-Delta Public Advisory Committee (BDPAC).

9-2. ROLL CALL AND ESTABLISHMENT OF QUORUM

Chairman Hunt explained why the six Federal members were not present at the meeting. In May, 2004, staff of the California Fair Political Practices Commission (FPPC) issued an advice letter to the U.S. Environmental Protection Agency concluding that the six non-voting Federal members of the California Bay-Delta Authority are members of a State agency for purposes of compliance with the California Political Reform Act's disclosure and disqualification rules. Federal attorneys concluded that the application of State ethics laws to Federal officials would violate the doctrine of sovereign immunity and advised the Federal members of the Authority to not participate in the Authority meeting on June 9 and 10. State and Federal officials are working to resolve this problem, and the Federal agencies are continuing to cooperate with the State of California to carry out the goals of the CALFED Program.

Tom Hagler, Assistant Regional Counsel for U.S. Environmental Protection Agency, made three points: (1) this situation applies to five other State agencies, as well as to the Bay-Delta Authority; (2) Federal agencies are still cooperating and participating in the CALFED Program; and (3) principles of federalism sometimes pose challenges to the collaborative nature of the Program, but the situation will be worked out.

Roll call was taken and a quorum was established shortly thereafter. The following Authority members were present for the meeting:

Public – Paula Daniels, representing the Southern California Region; Patrick Johnston, representing the Delta Region; Alfred Montna, representing the Sacramento Valley Region; Susan Kennedy, representing the San Francisco Bay Region; and Daniel Wheeler and Marc Holmes, Members at Large.

Bay-Delta Public Advisory Committee Representative – Gary Hunt.

State – Mike Chrisman, Secretary for Resources and designee Crawford Tuttle; Lester Snow, Director of Water Resources (DWR); Ryan Broddrick, Director of Fish and Game (DFG) and designee Diana Jacobs; Ken Trott, designee for A.G. Kawamura, Secretary of Food and Agriculture (CDFA); Beth Jines and Jim Branham, designees for Terry Tamminen, Secretary of the Environmental Protection Agency (CalEPA); and Dave Spath, designee for Sandra Shewry, Director of Health Services (DHS).

Ex-Officio – The Honorable Michael Machado, chair of the Senate Agriculture and Water Resources Committee and Dennis O'Connor, designee for Senator Machado; John Moffat, designee for The Honorable Charles Poochigian, vice-chair, Senate Agriculture and Water Resources Committee; Jeff Volberg, designee for The Honorable Joseph Canciamilla, Chair of the Assembly Water Parks and Wildlife Committee; and Kevin O'Neill, designee for The Honorable Tim Leslie, vice-chair of the Assembly Water, Parks and Wildlife Committee.

9-3. ADMINISTRATIVE ITEMS

The Summary of the April 7 and 8, 2004 Authority meeting was adopted.

9-4. DIRECTOR'S REPORT

Director Patrick Wright asked Lester Snow, DWR Director, and Mark Charlton, U.S. Army Corps of Engineers (Corps/USACE) to present an update on the recent levee break on Jones Tract. They described the activities of the State and Federal agencies and their cooperation in containing the levee break. Tom Zuckerman, co-counsel of the Central Delta Water Agency, stated that the cause of the levee break was unknown because the breach destroyed the evidence. In addition, he said the levee had appeared to be in good condition and was not thought to be at risk.

9-5. PROGRAM PLANS. 2004 PROGRAM PLAN DEVELOPMENT.

Criteria for Approval of Program Plans – **Resolution 04-06-01.** Approving Criteria for Approving Program Plans.

Wendy Halverson Martin, Chief Deputy Director, presented the requirements, use and language of the proposed criteria for approval of Program Plans. The proposed criteria (abridged) cover the following:

- Consider accomplishments
- Consistent with goals and objectives
- Actions advance the Program element
- Budget and funding
- Prepared by implementing agencies
- Performance measures
- Consistent with implementation commitments in Record of Decision (ROD)
- Balanced implementation
- Integration of Science
- Public involvement

Senator Machado said that objectivity and consistency, as well as benchmarks to evaluate progress, need to be included in the criteria and other members agreed. In addition, the members wanted to amend the first bullet and include "address and evaluate" accomplishments. Action on the resolution was deferred until the August meeting, at which time revised criteria will be considered for adoption.

Balance and Integration – Informational Item

Patrick Wright presented the topics of balance and integration, including a summary of how the Authority in December reviewed the previous years' accomplishments, the Authority's concerns and recommendations for action, the status of those actions and the next steps.

Program Plan Major Activities and Issues – Informational Item

Wendy Halverson Martin presented the overarching issues. The major activities and issues identified by BDPAC and its subcommittees were reviewed for each program by the implementing agency's representative and the Program Manager as follows.

- Environmental Restoration Program: Diana Jacobs (DFG) and Dan Castleberry (Authority)
- Water Supply Reliability: Kathy Kelly (DWR) and Tom Gohring (Authority)
- Levee System Integrity: Kathy Kelly (DWR) and Sergio Guillen (Authority)
- Drinking Water Quality: Dave Spath (DHS), Karen Schwinn (US EPA), Beth Jines (SWRCB), and Tom Gohring (Authority)
- Science: Kim Taylor (Authority)

Members asked the staff clarifying questions. Dennis O'Connor said that in addition to showing how to solve any identified problems, the Program Plans should be combined with the 10-Year Finance Plan.

Public Comments were as follows:

- 1) Greg Gartrell of the Contra Costa Water District said that the Water Quality Program Plan was significantly improved from the April draft. The Program Plan should reflect the budget to show how much is available, versus how much is needed.
- 2) Steve Macaulay, California Urban Water Agencies (CUWA), referred to his letter dated May 24, 2004, and said that they are working with agencies and that the Water Quality Program Plan is a work in progress.

Gary Hunt said that once we have the 10-Year Finance Plan and the financing worked out, then members can go to Washington, D.C., to lobby for a greater degree of Federal funding participation.

9-6. FINANCE OPTIONS REPORT AND 10-YEAR FINANCE PLAN – Informational Item

Chairman Hunt introduced this topic stating that the Finance Options Report presented all of the facts on the CALFED Program components, as well as current and projected financing. He said the development of the 10-Year Finance Plan is not about imposing certain fees, but about determining costs and financing mechanisms through an open and transparent process.

Kate Hansel presented the next steps for the Finance Options Report and explained that the purpose of the 10-Year Finance Plan is to identify funding targets, unmet needs, preliminary finance strategies and further explore user fees. The Finance Options Report should be completed by August.

Lester Snow said that the user fees would not apply to the entire Program, but that they will be very specific.

Comments were received from the following members of the public:

- 1) Joe Caves of The Nature Conservancy commented that The Nature Conservancy is a strong supporter of the CALFED Program balanced implementation and that a fair, carefully crafted, balanced funding package will increase public and legislative support for the CALFED Program.
- 2) Mary Wells, farmer, director of Maxwell Irrigation District and member of Westside Water District and Northern California Water Agency, commented that the user fees must be fairly linked to the benefit and the benefit must be specifically identified. Currently the farmers in her area pay for water and water right fees; and when the water contracts are renewed, they anticipate higher project water costs from \$2 an acre-foot (AF) to \$24/AF. The idea of user fees will be difficult to sell. In response to questions from Al Montna, she said that the agricultural interests cannot afford Sites Reservoir alone, but the Tehema-Colusa Canal Authority and Glenn-Colusa Irrigation District have facilities to contribute to the project. The agricultural community may not get additional water from the reservoir, but they would get additional flexibility in operations.
- 3) Charles Hoppin, California Rice Industry Association, commented on the estimated agricultural user fee of \$7.82 per AF. He was concerned because he estimated that it would cost the rice industry \$25 million. In response, Al Montna said that was a preliminary figure and there was an emphasis on determining fair and equitable user fees.
- 4) Bill Pauli, President of the California Farm Bureau Federation, said that he was opposed to fees because he worried that regardless of who the beneficiaries are, those with money would be assigned the fees, whereas those without money would not. The Authority needs to be very careful about defining "beneficiary pays". In response, Gary Hunt said that whatever the Authority does will be consistent with the Administration's May Revise language; and there is a need to have a water system that works and to ensure that the water delivery system is maintained for the future.
- 5) Tim Quinn, Vice President of State Water Project Resources, Metropolitan Water District of Southern California, said that he was pleased with the 10-Year Finance Plan approach to determining funding needs for the Program.

- 6) Steve Hall, Executive Director of the Association of California Water Agencies, commented that: (1) costs and benefits should be proportionate; (2) the Authority alone should not develop the user fees; and (3) there should be consideration of cost-sharing agreements. He said that he was more comfortable with Lester Snow's comments (that user fees would not be broad-based but specific to the benefits) but was concerned with the current budget language being developed by the Legislature.
- 7) Brent Walthall, Kern County Water Agency, stated that he was encouraged with the process; the 10-Year time frame is good; and was also comfortable with comments from Gary Hunt, but not with the Legislature's language.
- 8) Gary Bobker, The Bay Institute, commented that there should be a close correlation between benefits and fees; and that where there are broad-based benefits, there should be broad-based fees. He went on to say that water is a public trust resource; but because historically users were not good custodians of the resource, environmental problems and then regulatory reactions occurred. The CALFED Program has not resolved the inherent conflict between restoring the environment (hydrologic conditions) and extracting more water from the system. He would like to see more discussion of broad-based benefits. Al Montna pointed out that specifically the rice industry has made significant contributions to environmental objectives.
- 9) Greg Gartrell stated that cost-sharing will work on large projects; however, the beneficiary baseline will need to be addressed. He said that beneficiaries should even include those who put waste in the rivers.

Gary Hunt concluded by saying that California is at the beginning of a long road that needs to be covered in a short time, and that negotiations need to acknowledge the CALFED Program's accomplishments.

The meeting recessed for the day at 5:36 p.m.

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June 10, 2004

10-1. CALL TO ORDER AND INTRODUCTORY REMARKS

The meeting was called to order at 9:25 a.m. on June 10, 2004.

10-2. ROLL CALL AND ESTABLISHMENT OF QUORUM

Roll call was taken and a quorum was established soon after.

10-3. LEAD SCIENTIST REPORT AND INDEPENDENT SCIENCE BOARD REPORT

Dr. Johnnie Moore, Lead Scientist, made a presentation on the history of water development in California paralleled with water quality challenges in western Montana.

Denise Reed of the Independent Science Board (ISB) reported on the first meetings of the ISB and its comments on the Delta Improvements Package. In response to a question from Paula Daniels, Ms. Reed said that the ISB has identified issues that need to be addressed but has not yet been involved sufficiently to determine what actions or studies need to be conducted. The ISB will meet again in September and shortly thereafter will bring back to the Authority more issues to consider. Marc Holmes welcomed Dr. Moore, said that he appreciated the involvement of science in the Program, and asked about the development of the ISB membership. Dr. Moore said that the ISB membership will be filled in the near future and will have 16 members with many types of expertise to provide a broader science base.

Gary Hunt asked Dr. Moore to bring to the Authority experts in the field of climate change to present the possible implications of climate change on the snowpack in California and potential impacts to reservoir storage.

Gary Hunt asked to move to Agenda Item 6.

10-6. MERCURY STRATEGY – ECOSYSTEM RESTORATION PROGRAM –

Resolution 04-06-03. Directing Implementation of the Mercury Strategy for the Bay-Delta Ecosystem.

Dan Castleberry presented the Ecosystem Restoration Program (ERP) Mercury Strategy and the proposed development of an implementation plan and budget that will then be brought back to the Authority for approval. Paula Daniels stated that she was concerned with the people and health issues and that they are ongoing and immediate, whereas the Mercury Strategy will take some time to implement. Donna Podger, Authority staff, replied that work is currently ongoing and staff will bring a grant proposal on this issue to the Authority for approval in August. Diana Jacobs, DFG, said the fishing regulations, though written only in English, caution about fish consumption due to the mercury. Dave Spath, DHS, said that his agency has been working on this issue, but more needs to be done. Community outreach and various methods of communication to the Delta fish consumers are important, but underfunded. Dan Castleberry said that the efforts to control the sources of mercury are through source identification and mine remediation.

The Authority unanimously (13-0) adopted the resolution directing staff to work with implementing agencies to develop a Mercury Strategy implementation plan.

10-4. DELTA IMPROVEMENTS PACKAGE - Resolution 04-06-02. Supporting a Draft Memorandum of Understanding for CALFED Program Activities in the Delta and Directing Staff to Work with the Implementing Agencies to Finalize a Memorandum of Understanding and Move Forward with Implementation.

Director Patrick Wright presented the Delta Improvements Package agenda item and he outlined the key linkages between components, the schedule, and conditions for interim and full implementation of the South Delta Improvement Project, including increased permitted pumping capacity of the SWP Banks Pumping Plant to 8,500 cubic feet per second (cfs).

Gary Hunt clarified the resolution that directs Authority staff to work with the implementing agencies to finalize the Memorandum of Understanding (MOU) and move forward with implementation.

Al Montna stated that the MOU should specify that there will be no redirected impacts, and questioned whether there is sufficient water to address the salinity issue in the lower San Joaquin River. Jerry Johns responded that the parties are excited about working on this issue and that there are many opportunities, including operation of reservoirs and drainage, and reducing the application of water. Lester Snow added that there is a similar dynamic as there was with the Phase 8 water rights negotiations, and that parties are more optimistic than before about working out solutions.

Paula Daniels was concerned about: (1) when it was going to be available for review in advance of the August meeting and what the schedule for adoption was; (2) overall

timeline; (3) process of working on the MOU may be a good one, but some concerns are only now being addressed; and (4) regulatory issues need to be incorporated in the MOU as well. Lester Snow responded that the current timeline provides for the full operable barriers to be operational in 2007, and each piece of the Package has its own timeline.

Comments were received from the following members of the public.

- 1) Barry Nelson, Natural Resource Defense Council, stated that many issues have not been resolved such as: (1) water quality issues; (2) regulatory commitments; (3) timeline for the MOU and linkages; and (4) how dry-year transfers will be handled.
- 2) Michael Jackson, California Sportfishing Protection Alliance, commented that it is too early to approve increased pumping because of concerns about water quality, endangered species and Delta ecosystem health. Additional comments included that: (1) all species, not just listed species, need to be evaluated; (2) no groundwater analysis has been conducted; (3) validation of CALSIM needs to be done; (4) the only water quality component being evaluated is salinity; and (5) increased pumping will extirpate Delta smelt and winter-run Chinook salmon.
- 3) Tom Birmingham, General Manager of Westlands Water District, commented that the idea of a MOU came about after the meeting last year in Napa. The actions in the MOU include protecting and improving water quality, including drinking water

quality. The MOU is under ongoing review, and the Westlands Water District has submitted comments. It is important to maintain Program balance. Finally, Westlands supports Contra Costa Water District's written comments that it may be necessary to move its intake.

- 4) Bill Jennings, DeltaKeeper, stated that there are numerous deficiencies in the Delta Improvements Package and that approval is premature until the SWRCB's triennial review of water quality standards is conducted and the Environmental Impact Statement/Environmental Impact Report is prepared.
- 5) David Nesmith, Environmental Water Caucus, supports the Delta Improvements Package but is concerned that the MOU includes a great deal of specificity regarding increased pumping plans and strategies; however, it is vague when it comes to water quality and ecosystem issues. He recommended delaying the adoption of the MOU and modifying it to include more specificity on those issues.
- 6) Tim Quinn commented that the development of the MOU is a very participatory process and said he believes the Delta Improvements Package is balanced. Also, he said that: (1) Southern California has invested \$3 billion in Southern California storage; (2) if fish are not recovering in the Delta, then it is time to stop and evaluate why not; (3) there is less specificity on ecosystem issues because Southern California has done a lot in the Ecosystem Restoration Program; and (4) the MOU is the first place where improving water quality has been dealt with directly.
- 7) Steven Evans, Friends of the River, stated that he had deep concern regarding the Delta Improvements Package and the SWP/CVP Operations Criteria and Plan (OCAP) process for a number of reasons: (1) it provides no real protection for listed species; (2) the upper Sacramento River temperature standard is to be moved upstream 20 miles; (3) no changes were proposed for the Red Bluff Diversion Dam that will continue to impact 54 percent of the spring-run Chinook salmon; (4) increased diversions in the Delta will impact Delta smelt; (5) water transfers will result in a reduction of groundwater and fallowing of land; and (6) it is an environmental and legal trainwreck. Restoring the Delta was a goal of the CALFED Program, and the increased pumping will not do that.
- 8) Eric Wesselman, Sierra Club, was concerned with fairness and balance; and the Delta Improvements Package fell short in those areas. Exports are to occur at the expense of water quality, fish, etc. and that the Sierra Club had provided detailed written comments through the written comments from the Environmental Water Caucus.

Senator Machado said that linkages are important to the Package and they provide assurances, such as DWR saying that water quality will be met prior to increased Delta pumping.

- 9) Steve Macaulay, CUWA, stated that the ROD addresses drinking water quality in three ways: (1) through source control; (2) treatment technology; and (3) Delta operations. The Delta Improvements Package addresses the third approach. In addition, CUWA supports balance.
- 10) Gary Bobker, The Bay Institute, was encouraged by the proposed changes addressed by Jerry Johns on the MOU. He supports inclusion of statements requiring compliance with water quality standards in water right permits, and that actions will not result in a violation or degradation of water quality. These conditions need to apply to interim as well as full implementation. He said that the increased capacity at the pumps can be used for ecosystem benefits to address broader ecosystem impacts. There needs to be a commitment to include science as part of the implementation. Comprehensive flow management needs to be addressed as well as pumping is increased.
- 11) Richard Denton, Contra Costa Water District, referred to the District's letter addressing potential relocation of its water intake and stated that performance criteria should be included in the Delta Improvements Package. He said that it is not just important to meet existing standards, but to keep water quality where it is, or improve it, because currently water quality is better or higher than the standards. He said he would support the MOU if it were more specific and included performance criteria.
- 12) Karna Harrigfeld, Stockton East Water District, opposed the MOU as drafted and supported the Delta Improvements Package, but not at the expense of water users. The MOU must recognize Federal commitments regarding New Melones Reservoir, and there should be no redirected impacts.
- 13) Mindy McIntyre, Planning and Conservation League, strongly opposed the MOU because she believes it is not balanced and noted that she had submitted a letter with detailed comments.

Jim Branham, designee for Terry Tamminen, commented that the SWRCB and the Central Valley Regional Water Quality Control Board support the process of the MOU.

Lester Snow provided clarification of the MOU process: What it is, and what it is not. The ROD included commitments, two of which have not happened: (1) continuous improvement of water quality including the dissolved oxygen situation on the San Joaquin River at Stockton; and (2) increased pumping in the Delta in 2003. The MOU is a disclosure process for increased pumping. It is an "extra" process outlining extra commitments and extra linkages. It is an effort to increase assurances. The environmental documentation will occur anyway, and public debate of the issues is being achieved.

Pat Johnston asked for clarification of the terms "interim" and "full implementation". Susan Kennedy and Senator Machado identified inconsistencies in the wording in the MOU. Senator Machado said that the compliance issue and language needed work as the words are very important.

Marc Holmes had two main concerns. The first was the content of the MOU, and the second was the action before the Authority to approve the resolution supporting the MOU. He stated that: (1) the language in the MOU is vague; (2) approving it would be

de facto approval of increased pumping to 8500 cfs without an evaluation of the environmental documentation; and (3) there was no demonstrated guarantee of ecosystem restoration and compliance with water quality standards not to mention Endangered Species Act recovery levels.

Patrick Wright replied that the purpose of the document was to update the schedules, commitments and linkages in the ROD.

Susan Kennedy said the MOU is not a political document, but the conditions do need to be clarified. She suggested changes to the wording of the resolution:

1) The title would read:

SUPPORTING DEVELOPMENT OF A DRAFT MEMORANDUM OF UNDERSTANDING FOR CALFED PROGRAM ACTIVITIES IN THE DELTA AND DIRECTING STAFF TO WORK WITH THE IMPLEMENTING AGENCIES TO FINALIZE A MEMORANDUM OF UNDERSTANDING. ~~AND MOVE FORWARD WITH IMPLEMENTATION~~

2) And the final paragraph would read:

NOW, THEREFORE, BE IT RESOLVED that the California Bay-Delta Authority supports the development of a Draft Memorandum of Understanding for CALFED Program activities in the Delta and directs staff to work with the implementing agencies to finalize a memorandum of understanding for consideration at the August meeting. ~~and move forward with implementation.~~

The Authority adopted the amended resolution with a 12-1 vote, with Marc Holmes voting against.

10-5. SURFACE STORAGE – Informational Item

The surface storage agenda item was deferred until the August meeting.

A lunch break was taken and the meeting reconvened at 1:10 p.m.

10-7. PROPOSAL SOLICITATION PROCESS, AND GRANT AND CONTRACT APPROVALS – Action Item

10-7A. ECOSYSTEM RESTORATION PROGRAM – Resolution 04-06-04.

Approving Ecosystem Restoration Program Grants and Authorizing the Director, or Designee, to Process the Approved Grants.

Dan Castleberry made a presentation on the three ERP grants that were before the Authority for approval.

Comments were received from the following member of the public.

- 1) David Miller, California Association of Professional Scientists, stated he was concerned that the preparation of environmental documents for the ERP grants would be contracted out, and that State scientists could and should prepare the documents.

Diana Jacobs said that it was common practice to contract out the preparation of environmental documents because of the shortage of State scientists in the various agencies.

The Authority unanimously adopted the grants with a 12-0 vote.

10- 7B. WATER SUPPLY PROGRAM – Resolution 04-06-05. Recommending that the Department of Water Resources Proceed with the Award of Local Groundwater Assistance Program Grants for Fiscal Year 2003-04.

John Woodling, DWR, presented the Local Assistance Groundwater Program grants for FY 2003-2004 that DWR has selected for approval. Gary Bobker, The Bay Institute, commented that for this and future expenditures, the CALFED Program should fund regional water management programs where there is a regional benefit, whereas other sources of funds should be used for local projects that have only a local benefit. It would be necessary to develop criteria to evaluate the grant applications to distinguish between local and regional benefits. It also would be good to develop a mechanism to track performance.

The Authority adopted the resolution with an 11-0 vote, with Gary Hunt abstaining.

10-8. PUBLIC COMMENT

No one wished to speak during the Public Comment period.

ADJOURNMENT

The meeting was adjourned at 1:45 p.m.